

[PATENT]  
BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number: 09/678,915  
Filed: 10/04/2000  
Art Unit: 3627  
Today's Date: June 18, 2003

Examiner: Zeender  
Atty Dkt: KRONA01/00  
Due Date: 06/23/2003

Restriction Response

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In Response to the Restriction Requirement dated 05/23/2003 in the above matter, please consider the election below:

**Election**

In response to the Restriction Requirement in the above case dated 05/23/2003, the applicant hereby elects the Invention of Group II, Claims 12-22.

The Examiner has opined that the application contains claims directed to patentably distinct species of the claimed invention, requiring further restriction of Group II into Species I, indicated as depicted by claims 12-18, and Species II, indicated as depicted by claims 19-22. Applicant requests reconsideration of this second, additional requirement based upon the species, as claims 12-18 claim related inventions and, absent specific criteria, such species restriction is not appropriate.

As indicated in the MPEP at 808.02:

"Where the related inventions as claimed are shown to be distinct under the criteria of MPEP 806.05(c - I), the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:

(1) Separate classification thereof:

This shows that each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(2) A separate status in the art when they are classifiable together:

Even though they are classified together, each subject can be shown to have

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formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(3) A different field of search:

Where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions."

In the present case, the Examiner has not complied with the MPEP as above by failing to show separate classification, status in the art, different field of search, or any of the above required criteria, therefore, as indicated in the MPEP, "no reason exists for dividing among related inventions".

Thus, it is, in our opinion, appropriate for the Examiner to prosecute Group II, claims 12-22 on the merits, and dispense with the additional species restriction requirement.


Nonetheless, in order to be fully responsive to the present Restriction Requirement, an election must be made even when under traverse. Applicant elects under protest species II with traverse, which species II was determined by the Examiner as including claims 19-22 for prosecution, if no generic claim is finally held to be allowable.

Once again, however, this election of the species is made under protest and with traverse for reasons indicated above, and reconsideration of this requirement is respectfully requested.

Wherefore, the applicant respectfully requests Examination of Group II, Claims 12-22 of the present case drawn to methods of servicing vending machine(s), for the reasons above enumerated.


If additional issues remain, and the Examiner is of the opinion that same could be resolved by telephone amendment, the undersigned respectfully requests same at (985) 845-0000.

Respectfully submitted,

  
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#### CERTIFICATE OF FAXING

I HEREBY CERTIFY that the present document was faxed to the Commissioner for Trademarks, Technology Center 3600 at 703 305-7687, this 18<sup>th</sup> day of June, 2003.

  
Joseph T. Regard (PTO Reg 34,907)